



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,142	08/21/2001	Anthony Craig Shurman	YOSHA-2 (temp.)	8865

26453 7590 10/10/2002

BAKER & MCKENZIE
805 THIRD AVENUE
NEW YORK, NY 10022

EXAMINER

BUI, LUAN KIM

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 10/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,142

Applicant(s)

SHURMAN, ANTHONY CRAIG

Examiner

Luan K Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: .

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with indefinite language too numerous to mention specifically, and should be revised carefully. For example only, the phrases “adapted for inserting the body into a tight location” in claim 1, “the tight location is ... a cigarette package” in claim 2, “while the body is inserted ...” in claim 3, “the cigarette package is ...” in claim 4, “a cigarette can be extracted ...” in claim 5, “the confectionary items are ...” in claims 6-8, 19-21, 26-28 and 34-36, “the wrapper is a flexible plastic wrapper” in claims 10, 23, 30 and 38, “adapted for inserting the body between ... the cigarette package” and “while the body ...” in claim 17, “so that a flip top ... the cigarette package” in claim 25, “so that a flip to of the cigarette package ... the cigarette package” in claims 32 and 39, “so that the confectionary items ... the cigarette package” in claim 41, “so that a flip top of a cigarette ... the cigarette package” in claims 43 and 44 define the dispensing container in reference to the confectionary items or the cigarette package which is undefined and has not been positively claimed rendering the claims vague and indefinite because it is not clear what structural limitations applicant intends to encompass with such language. The applicant is required to make corrections to the claims wherever appropriate in order to clarify same.

Art Unit: 3728

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 10-13, 16-21, 23-28, 30-36 and 38-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Cillario (4,538,731). To the extent that the Examiner can determine the scope of the claims, Cillario discloses a dispensing container (1) comprising a body (3, 4, 5, 9, 10) having a chamber for storing confectionary items, a door (15) connected to the body and operable to dispense the confectionary items stored in the chamber, a top portion (8) including the door and a bottom portion ^(lower part of the container) having a tapered edge (Figures 3-4).

5. Claims 1-8, 10-21, 23-28, 30-36 and 38-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Ciaccio (4,804,113). To the extent that the Examiner can determine the scope of the claims, Ciaccio discloses a dispensing container (10) comprising a body (16) having two chambers, two doors (30, 32) connected to the body with each door for each chamber, a top portion including the doors and a bottom portion having a tapered edge (Figures 1-3).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3728

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-14 and 16-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cillario (4,538,731) in view of Gilels et al. (5,636,732; hereinafter Gilels'732). To the extent that the Examiner can determine the scope of the claims, Cillario discloses a dispensing container (1) comprising a body (3, 4, 5, 9, 10) having a chamber for storing confectionary items, a door (15) connected to the body on a first side and operable to dispense the confectionary items stored in the chamber, a top portion (8) including the door and a bottom portion having a tapered edge (Figures 3-4). Cillario also discloses the other claimed limitations except for a second being located on a second side of the body. Gilels'732 teaches a dispensing container (1) comprising a body having a chamber for storing confectionary items, a first door (11) located on a first side of the body and a second door (11) located on a second side of the body operable to dispense the confectionary items stored in the chamber (Figures 1-3). It would have been obvious to one having ordinary skill in the art in view of Gilels'732 to modify the dispensing container of Cillario so it includes a second door located on a second side of the body to facilitated dispensing the confectionary items from the chamber.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Ciaccio (4,804,113). Cillario as modified further fails to show a second chamber with the second door being located on the second side of the body and operable to dispense items stored in the second chamber. Ciaccio shows a container (12) comprising a body (16) having two chambers and two doors (30, 32) with each door located on each chamber (Figure 1). It would have been obvious to one having ordinary skill in the art in

Art Unit: 3728

view of Ciaccio to modify the dispensing container of Cillario as modified so the chamber includes two chambers with each door located on each chamber and operable to dispense items stored in each chamber.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648. Also, any inquiry regarding the status of the application or status of the amendments either by mail or fax, etc... should be directed to TC 3700 Customer Service.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148. Facsimile correspondence for this application should be sent to (703) 872-9302 for Formal papers and (703) 872-9303 for After Final communications.

lkb
October 9, 2002



Luan K. Bui
Primary Examiner